



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1232]

Certain Chocolate Milk Powder and Packaging Thereof; Notice of a Commission

Determination Not to Review an Initial Determination Granting a Motion to Amend the Complainant and Notice of Investigation and to Review an Initial Determination Extending the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 18) of the presiding chief administrative law judge (“CALJ”), granting complainant’s motion to amend the complaint and notice of investigation. The Commission has also determined on its own initiative to review an ID (Order No. 20) extending the target date for completion of the investigation to June 21, 2022. On review, the Commission extends the target date to August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On December 1, 2020, the Commission instituted this investigation based on a complaint filed by Meenaxi Enterprise Inc. of Edison, New Jersey

(“Meenaxi”). 85 FR 77237 (Dec. 1, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain chocolate milk powder and packaging thereof that infringe U.S. Trademark Registration No. 4,206,026. *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation names 21 respondents: Bharat Bazar Inc. of Union City, California (“Bharat Bazar”); Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market of Fremont, California (“Organic Food”); India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California (“New India”); Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Newark, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Mandi Cash & Carry of Piscataway, New Jersey; Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas; Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a iShopIndia.com of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey. *Id.* The Office of Unfair Import Investigation (“OUII”) was named as a party. *Id.*

On February 10, 2021, the former presiding ALJ issued an ID (Order No. 6) finding all respondents in default. OUII supported the motion. On March 2, 2021, the Commission issued a notice determining not to review Order No. 6.

On May 24, 2021, Meenaxi moved for a summary determination of a section 337 violation by all of the respondents, each of whom had previously been found in default. On June 16, 2021, OUII responded in support of the motion. On December 1, 2021, the former presiding

ALJ granted the motion as an ID (Order No. 15). The ID raised a question whether at least one of the defaulting respondents—Organic Food—had properly been served and therefore found in default. Order No. 15, at 1, n.1.

On January 18, 2022, the Commission reviewed Order No. 15, and remanded the investigation to the ALJ in order to “consider whether a default finding is appropriate in view of the manner of service of documents on” Organic Food. Notice at 3 (Jan. 18, 2022). The remand afforded the ALJ the authority to cure defects, if any, as to Organic Food, and to identify and cure defects, if any, as to other respondents. *Id.* In view of these concerns, the Commission reconsidered its decision not to review Order No. 6, which, as noted above, found all respondents in default. *Id.*

On remand, Meenaxi moved for leave to amend the complaint and notice of investigation to:

- (i) substitute Organic Food with proposed respondent Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market, with an address of 12220 World Trade Dr #200, San Diego, California 92128 (“Organic Ingredients”);
- (ii) correct the address of respondent New India to 2850 Quimby Road, San Jose, California 95148;
- (iii) correct the address of respondent Bharat Bazar to 34301 Alvarado Niles Road, Union City, California 94587; and
- (iv) supplement the Complaint with Exhibits 9-a, 9-b, and 9-c, which address Organic Food and/or Organic Ingredients.

Unopposed Mot. of Compl’t for Leave to Amend the Compl. and Notice of Investigation at 3-4, 9-10 (Feb. 23, 2022).

On March 11, 2022, the CALJ issued one of the subject IDs (Order No. 18) granting the motion for leave to amend the complaint and notice of investigation. No petitions for review of Order No. 18 were filed. The Commission has determined not to review Order No. 18.

On March 15, 2020, the CALJ issued the second of the two subject IDs (Order No. 20) extending the target date to June 21, 2022, and stating that any remand ID will issue no later than May 20, 2022. Order No. 20, at 1. No petitions for review of Order No. 20 were filed.

The Commission has determined to review Order No. 20 on its own initiative. *See* 19 CFR 210.44. On review, the Commission sets the target date for completion of the investigation to August 31, 2022. As stated in the Order Remanding the Investigation, the remand ID on summary determination of violation shall become final 45 days after issuance absent Commission review. *See* Order Remanding the Investigation at 4, ¶ 6 (Jan. 18, 2022). The Commission understands that the remand ID concerning summary determination on violation of section 337 will issue on or before May 20, 2022. *See* Order No. 20, at 1.

The Commission vote for these determinations took place on April 12, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 12, 2022.

Lisa Barton,

Secretary to the Commission.

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